

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 939-A

12 **FRANK TZONG-HWAI LEE**
13 **348 Camphor Avenue**
Fremont, CA 94539

A C C U S A T I O N

14 **Civil Engineer License No. C 34975**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown ("Complainant") brings this Accusation solely in his official capacity
21 as the Executive Officer of the Board for Professional Engineers and Land Surveyors ("Board"),
22 Department of Consumer Affairs.

23 2. On or about August 18, 1982, the Board issued Civil Engineer License Number C
24 34975 to Frank Tzong-Hwai Lee ("Respondent"). The Civil Engineer License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on September 30,
26 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

REGULATORY PROVISIONS

4. Section 6775 of the Code states, in pertinent part:

"The board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

...

"(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

..."

5. California Code of Regulations, title 16, section 404, subdivision (n), provides: "For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, 'incompetence' as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor."

6. California Code of Regulations, title 16, section 404, subdivision (w), states: "For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, 'negligence' as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing."

7. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

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1 **COSTS**

2 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Negligence)**

8 9. Respondent is subject to disciplinary action under section 6775, subdivision (c), of
9 the Code, and California Code of Regulations, title 16, section 404, subdivision (w), for
10 negligence in that Respondent prepared a geotechnical investigation report for a building to be
11 constructed in San Francisco, California, without consulting or relying on customary publications
12 and guidelines used in the geotechnical and earthquake engineering communities. As a result of
13 Respondent's failure to consult and rely on these publications and guidelines, Respondent (1)
14 improperly classified the potential for liquefaction in the soil beneath the proposed building; (2)
15 failed to obtain soil samples from the appropriate soil depth; and (3) did not carry out his
16 investigation in accordance with generally accepted soil engineering practices.

17 10. The circumstances of Respondent's negligence are as follows:

18 a. In or about January 2007, John Sullivan ("Sullivan"), the owner of JPS Builders, Inc.,
19 a developer, hired Respondent to perform a soils and foundation investigation for a proposed
20 mixed-use building at 870 Harrison Street in San Francisco, California ("the Site"). On or about
21 February 5, 2007, Respondent submitted a Soil and Foundation Investigation Report of the Site
22 ("Report") to Sullivan.

23 In his Report, Respondent stated that his investigation consisted, inter alia, of obtaining soil
24 samples by "drilling, sampling and logging [] two exploratory test borings to a maximum depth
25 of 25-1/2 feet" Those samples showed that the "[s]urface soil at the site consi[sts] of brown
26 silty medium sand" that "was generally moist, dense and extended to the bottom of both borings."
27 Based on the soil samples, Respondent found that "[b]ecause of the silty medium sand and not
28 finding loose fine sand at the site, the potential for liquefaction at the site is thought to be

1 moderate.” Next, under a section entitled “Investigation Limitations,” Respondent concluded that
2 “[t]his report has been prepared in accordance with generally accepted Soil Engineering
3 practices.”

4 b. Respondent has admitted that he should have drilled, sampled, and logged the
5 exploratory test borings to 50 feet rather than 25 and 1/2 feet. Also, in a letter to Sullivan dated
6 February 14, 2007, Respondent stated that “the project site is within the high Liquefaction
7 Potential Zone”

8 c. Respondent has admitted that he has “performed very few liquefaction investigations
9 over the course of [his] career.” He has also stated that he “will henceforth be very cautious and
10 more diligent with respect to the possibility that a complete liquefaction investigation may be
11 needed in the investigation of every site I work on.”

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Incompetence)**

14 11. Respondent is subject to disciplinary action under section 6775, subdivision (c), of
15 the Code, and California Code of Regulations, title 16, section 404, subdivision (n), for
16 incompetence in that in preparing a geotechnical investigation report for a building to be
17 constructed in San Francisco, California, Respondent (1) lacked awareness and/or knowledge of
18 current and customary publications and guidelines used in the geotechnical and earthquake
19 engineering communities; (2) failed to drill exploratory probes to sufficient soil depths; and (3)
20 improperly classified the potential for liquefaction in the soil beneath the proposed building. The
21 circumstances of Respondent’s incompetence are set forth above in Paragraphs 10.a., 10.b., and
22 10.c.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
26 decision:

27 1. Revoking or suspending Civil Engineer License Number C 34975 issued to Frank
28 Tzong-Hwai Lee;

1 2. Ordering Frank Tzong-Hwai Lee to pay the Board for Professional Engineers and
2 Land Surveyors the reasonable costs of the investigation and enforcement of this case pursuant to
3 Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
5

6 DATED: August 4, 2010

Original Signed

7 DAVID E. BROWN, Executive Officer
8 Board for Professional Engineers and
9 Land Surveyors
10 Department of Consumer Affairs
11 State of California
12 *Complainant*

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